

5015. Alleged misbranding of "Hite's Pain Remedy." U. S. * * * v. S. P. Hite Co., a corporation. Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 6020. I. S. No. 4686-e.)

On January 11, 1915, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the S. P. Hite Co., a corporation, Roanoke, Va., alleging shipment by said company, in violation of the Food and Drugs Act as amended, on or about December 17, 1912, from the State of Virginia into the State of Maryland, of a quantity of an article labeled, in part, "Hite's Pain Remedy," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume)----- 64.5

Essentially a hydroalcoholic solution of oleoresin of capsicum, with methyl salicylate, eucalyptol (or oil eucalyptus), thymol (or oil of thyme), camphor (or a camphor containing oil), and sassafras oil.

It was charged, in substance, in the information that the article was misbranded for the reason that statements appearing on its label falsely and fraudulently represented it as a remedy for croup, la grippe, pneumonia, and diphtheria, when, in truth and in fact, it was not. Misbranding was alleged for the further reason that the following statements regarding the therapeutic or curative effects of the article included in the circular or pamphlet accompanying it, to wit, "Hite's Pain Remedy Cough Syrup—How to Make and Use.—Sweeten a half glass of water and add one-half teaspoonful Pain Remedy. * * * For * * * La Grippe, Pneumonia, Etc., use it freely. Also for Diphtheria, Croup, Measles, Scarlet Fever, Tonsillitis, and other diseases of the lungs and throat. * * * Always * * * reliable. Diphtheria—See Cough Syrup—How to Make and Use. Gargle with same and swallow a little each time. * * * In all cases add 3 tablespoonfuls Pain Remedy to 1 teaspoonful lard; heat and saturate two-ply cotton cloth 2 inches wide and bind on throat, * * * heat about a quart of wheat bran (dry) in a vessel, * * * and put it in a poke large enough to cover the throat well; apply it on a cloth to drive the remedy in. * * * Saturate the cloth often with Pain Remedy to subdue the swelling and soreness. Also give Tincture of Iron, 1 to 2 drops for every year of child's age. * * * Adults, 15 drops * * *. This treatment strictly followed has cured hundreds of cases. * * *," were false and fraudulent, in that by means of said circular or pamphlet they were applied to said article knowingly and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof and create in the minds of the purchasers thereof the impression and belief that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, as a remedy for la grippe, pneumonia, diphtheria, croup, measles, scarlet fever, and tonsillitis when used as a cough sirup according to directions contained in said circular, and effective for curing diphtheria when used externally with a heated poultice of dry wheat bran, and internally with tincture of iron, when, in truth and in fact, said article was not, in whole or in part, composed of, and did not contain, ingredients or medicinal agents effective, among other things, as a remedy for la grippe, pneumonia, diphtheria, croup, measles, scarlet fever, or tonsillitis when used as a cough sirup according to directions contained in said circular or when used in any

other manner, or effective as a cure for diphtheria when used externally with a heated poultice of dry wheat bran and internally with tincture of iron, or when used in any other manner.

On February 21, 1917, the case came on for trial before the court and a jury, and after the submission of evidence and argument by counsel the jury was charged by the court and retired, and, after due deliberation, returned a verdict of not guilty.

CARL VROOMAN, *Acting Secretary of Agriculture.*